

PATENT

Atty Docket No.: 200310137-1

App. Ser. No.: 10/628,369

(or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

JP 2,078,848 to Chibou et al.

As discussed in the English language Abstract of the JP 2,078,848 document, Chibou et al. pertains to a method for varying temperature distributions to make the room comfortable for a person located in the room. To that end, Chibou et al. discloses the use of "an infrared rays temperature sensor 2 for detecting a radiating of the infrared rays from each of the interior locations and further detect a presence or non-presence of a person and a position of a person." More particularly, Chibou et al. discloses that the temperature detected by the infrared ray temperature sensor 2 is compared with the temperature detected by a room temperature sensing device 3 to determine whether a person is present in the room. The main control part 1 may determine the position of the person if the person is determined to be present in the room. Chibou et al. also discloses that operations of the components 4-9 of an air conditioner are varied in response to a person being detected in the room.

Arguments**Chibou et al. Does Not Anticipate Claims 1, 16, 24, 29, and 33**

The Official Action alleges that Chibou et al. discloses each and every element claimed in Claims 1, 16, 24, 29, and 33. On page 2, paragraph 3, the Official Action asserts

PATENT

Atty Docket No.: 200310137-1
App. Ser. No.: 10/628,369

that Chibou et al. discloses an air conditioner with a sensing device, where the sensing device includes an "infrared temperature sensor 2, driving device 12, target room temperature, air direction adjusting device 5, a blower 7 with rpm control and a controller 1." It is respectfully submitted that this rejection is clearly improper because the rejection fails to address a number of features claimed in Claims 1, 16, 24, 29, and 33 of the present invention. In addition, Chibou et al. fails to disclose those features that have not been addressed in the Official Action.

Initially, the Official Action has failed to address the "one or more detecting devices having a sensor configured to detect the at least one environmental condition and to display the detected at least one environmental condition" in combination with the "one or more reader devices configured to image the one or more detecting devices", as claimed in Claim 1. The Official Action has also failed to address that "one or more detecting devices having a sensor configured to detect the at least one environmental condition and to display the detected at least one environmental condition" is imaged with one or more reader devices, as claimed in Claims 16, 24, and 33. The Official Action has further failed to address means for performing the functions claimed in Claim 16, as claimed in Claim 29.

In fact, the Official Action makes no mention as to which element in Chibou et al. is being considered as reading on the "one or more detecting devices". Moreover, the Official Action makes no mention as to how Chibou et al. is being interpreted, as either disclosing or being modified, to disclose that "one or more detecting devices" having a sensor to detect at least one environmental condition and to display the detected condition is imaged by a reader device. Clearly, therefore, the rejection of Claim 1 is improper and should be withdrawn.

For at least the foregoing reasons, it is respectfully submitted that Chibou et al. fails to disclose each and every element claimed in Claims 1, 16, 24, 29, and 33. As such, Chibou et

PATENT

Atty Docket No.: 200310137-1
App. Ser. No.: 10/628,369

al. cannot anticipate nor render these claims obvious. The Examiner is therefore respectfully requested to withdraw the rejection of Claims 1, 16, 24, 29, and 33 and to allow these claims.

Claims 2-15, 17-23, 25, 26, 30-32, and 34-39 are also allowable over Chibou et al. at least by virtue of their respective dependencies upon allowable independent Claims 1, 16, 24, 29, and 33.

Chibou et al. Does Not Anticipate Nor Render Obvious Claim 27

Claim 27 has been amended to include all of the features of Claim 28. In this regard, Claim 27 now includes "one or more metallic foil detecting devices positioned at various locations...wherein said one or more infrared image sensors are configured to image the one or more metallic foil detecting devices to thereby determine the temperatures of the various locations in the room."

The Official Action has rejected Claim 28 on the alleged basis that the features claimed therein are obvious because "it would have been obvious to one of ordinary skill in the exercise art to substitute one for other of equivalent sensors available in the prior art. *In re Fout*, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982)." This rejection is also clearly improper for at least the following reasons.

The Official Action has failed to indicate which sensor in Chibou et al. would have been obvious to substitute with the claimed metallic foil. Chibou et al. discloses two sensors, the infrared ray temperature sensor 2 and the room temperature sensing device 3. It is not at all clear as to which of these sensors the Official Action is asserting would have been obvious to replace with the claimed metallic foil. Furthermore, even assuming that one of ordinary skill in the art were somehow motivated to replace one of these sensors 2 or 3 with the

PATENT

Atty Docket No.: 200310137-1

App. Ser. No.: 10/628,369

claimed metallic foil, Chibou et al. would still fail to disclose that the claimed metallic foil is imaged by the other sensor 2 or 3.

Clearly, therefore, the Official Action has failed to establish that Claim 27 is anticipated nor *prima facie* obvious in view of the disclosure contained in Chibou et al. Accordingly, the Examiner is therefore respectfully requested to withdraw the rejection of Claim 27 and to allow this claim.

Chibou et al. Does Not Render Claims 1-14, 16-21, 23-37, and 39 Obvious

According to the rejections set forth on page 3 of the Official Action, all of the independent claims have been rejected as allegedly being anticipated by Chibou et al. These rejections based upon alleged anticipation by the disclosure contained in Chibou et al. have been addressed and overcome above. However, the Official Action also asserts that depending Claims 5, 6, 10, 11, 20, 21, 28, and 37 are obvious in light of the Chibou et al. disclosure.

Initially, it is respectfully submitted that depending Claims 5, 6, 10, 11, 20, 21, 28, and 37 are allowable over Chibou et al. at least by virtue of their respective dependencies upon allowable independent Claims 1, 16, and 33. These claims are, however, allowable over Chibou et al. for additional reasons.

The Official Action has rejected Claims 10 and 11 on the basis that the features claimed therein are "well known in the prior art." Although Applicants respectfully disagree that the features claimed in Claims 10 and 11 are well known, Applicants have provided arguments below as to the impropriety of the rejection itself. More particularly, the reasons set forth in the Official Action are clearly improper bases for rejecting claims as allegedly

PATENT

Atty Docket No.: 200310137-1
App. Ser. No.: 10/628,369

being obvious and the Official Action has thus failed to meet the test for obviousness as discussed above.

In fact, the mere fact that a feature is well known in the art is an improper basis for rejecting a claim as allegedly being obvious. Instead, the three criteria discussed, for instance, in *In re Vaeck* must be met to establish a *prima facie* case of obviousness. The Official Action has failed to meet these criteria. More particularly, the Official Action has failed to provide any motivation whatsoever for the desirability to modify Chibou et al. to include the features claimed in Claims 10 and 11. In addition, the Official Action has failed to indicate how the proposed modification would be made to cause Chibou et al. to render Claims 10 and 11 obvious.

Claims 5, 6, 21, and 37 include various types of sensors that visibly change based upon one or more environmental conditions around the sensors. The sensors visibly change so that the one or more environmental conditions around the sensors may be determined through the images of the sensors captured by a reader device.

The Official Action has rejected Claims 5, 6, 21, and 37 on the alleged basis that "it would have been obvious to one of ordinary skill in the exercise art to substitute one for other of equivalent sensors available in the prior art. *In re Fout*, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982)." (emphasis added). The Official Action has, therefore, asserted that it would have been obvious to replace one of the sensors 2 or 3 with the visibly changing sensors claimed in Claims 5, 6, 21, and 37. This assertion is clearly improper for at least the following reasons.

As discussed above, Chibou et al. discloses the use of an infrared ray temperature sensor 2 used to detect whether a person is located in a room. Therefore, even assuming for the sake of argument that one of ordinary skill in the art were somehow motivated to modify

PATENT

Atty Docket No.: 200310137-1
App. Ser. No.: 10/628,369

the room temperature sensing device 3 to comprise a visibly changing sensor as claimed in Claims 5, 6, 21, and 37, the infrared ray temperature sensor 2 would be unable to detect the changes in the sensing device 3 and thus the proposed modification would be completely obsolete. Clearly, therefore, the Official Action has failed to establish that Claims 5, 6, 21, and 37 are *prima facie* obvious in view of Chibou et al.

For at least the foregoing reasons, the Examiner is respectfully requested to withdraw the rejection of Claims 5, 6, 10, 11, 21, and 37 and to allow these claims.

Double Patenting*Application Serial No. 10/639,428*

Claims 1-39 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over Claims 1-46 of copending Application Serial No. 10/639,428 (hereinafter the "'428 Application") in view of Chibou et al. In setting forth this rejection, the Official Action alleges that the '428 Application discloses all of the features claimed in Claims 1-39 of the present invention except for a temperature memory and imaging system. In addition, the Official Action asserts that Chibou et al. makes up for these deficiencies and that it would have been obvious to modify the '428 Application to include a temperature memory and imaging system.

As discussed above, Chibou et al. fails to disclose a detecting device having a sensor and a reader device for imaging the detecting device, and where a controller is configured to determine at least one environmental condition based upon images of the detecting device captured by the reader device. Accordingly, even assuming for the sake of argument that one of ordinary skill in the art would somehow be motivated to modify the '428 Application to include the alleged "temperature memory and imaging system" disclosed in Chibou et al., the

PATENT

Atty Docket No.: 200310137-1
App. Ser. No.: 10/628,369

proposed combination would still fail to disclose each and every feature claimed in Claims 1-39 of the present invention.

For at least the foregoing reasons, the Examiner is respectfully requested to withdraw the nonstatutory obviousness-type double patenting rejection of Claims 1-39 based upon the proposed combination of the '428 Application and Chibou et al.

Application Serial No. 10/446,867

Claims 1-39 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over Claims 1-42 of copending Application Serial No. 10/446,867 (hereinafter the "'867 Application") in view of Chibou et al. In setting forth this rejection, the Official Action alleges that the '867 Application discloses all of the features claimed in Claims 1-39 of the present invention except for a temperature memory and imaging system. In addition, the Official Action asserts that Chibou et al. makes up for these deficiencies and that it would have been obvious to modify the '867 Application to include a temperature memory and imaging system.

As discussed above, Chibou et al. fails to disclose a detecting device having a sensor and a reader device for imaging the detecting device, and where a controller is configured to determine at least one environmental condition based upon images of the detecting device captured by the reader device. Accordingly, even assuming for the sake of argument that one of ordinary skill in the art would somehow be motivated to modify the '867 Application to include the alleged "temperature memory and imaging system" disclosed in Chibou et al., the proposed combination would still fail to disclose each and every feature claimed in Claims 1-39 of the present invention.

PATENT

Atty Docket No.: 200310137-1

App. Ser. No.: 10/628,369

For at least the foregoing reasons, the Examiner is respectfully requested to withdraw the nonstatutory obviousness-type double patenting rejection of Claims 1-39 based upon the proposed combination of the '867 Application and Chibou et al.

Conclusion

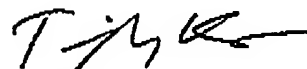
In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: February 28, 2006

By



Timothy B. Kang

Registration No.: 46,423

MANNAVA & KANG, P.C.
8221 Old Courthouse Road
Suite 104
Vienna, VA 22182
(703) 652-3817
(703) 880-5270 (facsimile)